REMARKS

Claims 1-20 were pending in this application and were each rejected. Claim 4 has been amended to correct a minor informality. Therefore, Claims 1-20 remain pending.

Reconsideration and full allowance of Claims 1-20 are respectfully requested.

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over *Krishna et al.* (U.S. Patent No. 6,563,837, hereinafter "Krishna") in view of *Koning et al.* (U.S. Patent No. 6,125,112, hereinafter "Koning"). The Applicant respectfully traverses this rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)*). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)*). Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)*). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Grabiak, 769 F.2d 729, 733, 226*

U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)*). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure. (*MPEP § 2142*).

Independent Claims 1, 4, 7, and 14 include some similar features. For example, these claims recite receiving or storing "incoming fixed-size data packets" at a "first data rate" at or in "N input buffers" and outputting the "fixed-size data packets" at a "second data rate equal to at least twice" the first data rate. These claims also recite receiving or transferring "fixed-size data packets" at the "second data rate" at or to "N output buffers" and outputting the fixed-size data packets at the "first data rate." As currently claimed, the input buffers receive at a first data rate, and the output buffers output at that same data rate. This limitation is not taught or suggested by the art of record.

For example, Krishna, in col. 8, lines 34-48, indicates that the packets may arrive on "input data links" at a certain data rate and that the switch fabric can have a different data rate. Krishna also describes, in col. 8, lines 1-15, that the output data links "unload" at some rate but

does not specify the rate (whether it could be the same as the input data rate). In another location, Krishna includes an odd quoted statement about the "capacity" of the input and output links but does not appear to indicate that this has anything to do with a data rate.

Koning also does not teach or suggest that the input data rate is the same as the output data rate. For this reason, among others, all claims should be allowed over all cited art.

Further, independent Claims 1, 4, 7, and 14 include "a bufferless, non-blocking interconnecting network," which the Office Action concedes is not taught or suggested by Krishna. Instead, the Office Action relies on Koning for this teaching. Koning teaches a non-buffered, non-blocking multistage switch, including switching fabric 10. Switching fabric 10 does not appear to include any buffers.

However, Koning cannot be properly combined with Krishna since Koning and Krishna teach away from each other. In fact, the very statement the Office Action uses as a motivation to combine actually teaches away from the combination. In Koning's col. 2, lines 13-15, Koning indicates that "[i]t is the primary object of the invention to provide a multistage ATM switch which is non-blocking and provides maximum efficiency without buffering." Krishna, on the other hand, is drawn to a combined input-output buffered network device (col. 3, lines 60-64). As these references are directed at different and opposing objectives on the very teaching that the Office Action attempts to combine, it can be seen that any such teaching is unmotivated and improper. Similar arguments apply to claims 2 and 5.

As such, independent Claims 1, 4, 7, and 14 distinguish over all art of record, and all claims should be allowed.

II. CONCLUSION

The Applicant respectfully asserts that all pending claims in this application are in condition for allowance and respectfully requests full allowance of the claims.

SUMMARY

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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